

1 KING, HOLMES, PATERNO & SORIANO, LLP
HOWARD E. KING, ESQ., STATE BAR NO. 77012
2 STEPHEN D. ROTHSCHILD, ESQ., STATE BAR NO. 132514
SROTHSCHILD@KHPSLAW.COM
3 1900 AVENUE OF THE STARS, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90067-4506
4 TELEPHONE: (310) 282-8989
FACSIMILE: (310) 282-8903

5 Attorneys for Defendant Impression
6 Entertainment, Inc.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10
11 NIKOLAJ COSTER-WALDAU,

12 Plaintiff,

13 vs.

14 IMPRESSION ENTERTAINMENT, INC.,

15 Defendant.

CASE NO.

**DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO *EX PARTE*
APPLICATION FOR TRO AND OSC RE:
ARBITRATION AND FOR EXPEDITED
DISCOVERY**

Date: July 28, 2017
Time: 8:30 a.m.
Ctrm:

Action Filed: July 28, 2017
Trial Date: None set

16
17
18
19
20 Defendant Impression Entertainment, Inc. ("Impression") respectfully submits the
21 following memorandum of points and authorities in opposition to the *ex parte* application of
22 plaintiff Nikolaj Coster-Waldau ("NCW") for a temporary restraining order enjoining Impression
23 from proceeding with the arbitration commenced against NCW and an order to show cause why a
24 preliminary injunction should not be issued for the same relief, and for expedited discovery.

25 ///

26 ///

27 ///

28 ///

3916.061/1195710.1

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO *EX PARTE*
APPLICATION FOR TRO AND OSC RE: ARBITRATION AND FOR EXPEDITED DISCOVERY

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. THE PARTIES' ARBITRATION AGREEMENT AND WELL-ESTABLISHED
3 LAW REQUIRE THE ARBITRATOR TO DETERMINE THE VALIDITY AND
4 EXISTENCE OF THE PARTIES' AGREEMENT IN ACCORDANCE WITH THE
5 AMERICAN ARBITRATION ASSOCIATION'S RULES

6 A. Background

7 For ten years Nikolaj Coster-Waldau ("NCW") enjoyed and profited from the hard work,
8 loyalty and friendship of his personal manager, defendant Impression Entertainment, Inc.
9 ("Impression") and its principal. Then, without explanation and after expressly acknowledging his
10 continuing contractual obligation to compensate Impression for the important role it played in his
11 success, NCW reneged. After trying without success to resolve matters informally, Impression
12 had no alternative except to exercise its contractual right to arbitration. Now, NCW seeks to evade
13 his clear contractual duty to resolve disputes privately in arbitration as well as his payment
14 obligations.

15 The parties' August 25, 2014 Management Agreement (the "Agreement"), which NCW
16 signed in the presence of Impression's principal, contained the following clear and unambiguous
17 arbitration agreement:

18 In the event of any dispute under or relating to the terms of this
19 agreement or any extension or breach thereof, it is agreed that the
20 same shall be submitted to arbitration to the American Arbitration
21 Association in California *in accordance with the rules promulgated
22 by said association* before a single arbitrator with at least ten (10)
23 years of experience in the entertainment industry, and judgment
24 upon the reward [sic] rendered by the arbitrator may be entered in
25 any court having jurisdiction thereof. This agreement shall be
26 deemed to be executed in the State of California and shall be
27 construed in accordance with the internal laws of said state [sic].

28 Declaration of Jill Littman ("Littman Decl."), ¶ 4 and Ex.1 (Agreement), ¶ 5 (emphasis
added).

29 In an September 18, 2015, email, NCW notified Impression that he no longer wished to
30 work with Impression. However, in the same email, NCW acknowledged his obligation to pay
31 commissions to Impression on his earnings from *Game of Thrones* "till it ends" and that
32 Impression's work for him was "absolutely stellar." *Id.*, ¶ 5 and Ex 2.

1 Thereafter, NCW stopped payment on a commission check to Impression and ceased
2 paying further commissions. (*Id.*, ¶ 6.) On July 11, 2017, Impression filed a Demand for
3 Arbitration with the American Arbitration Association (“AAA”) (the “Demand”). (Declaration of
4 Howard E. King (“King Decl.”), Ex. 3.)

5 NCW objected to the Demand, arguing that the parties’ arbitration agreement was induced
6 by fraud and, therefore, invalid or non-existent, and that the court was the proper forum for
7 adjudicating whether it was enforceable. (*Id.*, Ex. 4.)

8 AAA rejected NCW’s objection, deciding that, under the Agreement and the AAA Rules
9 incorporated therein, the arbitrator had jurisdiction to determine arbitrability.

10 AAA Rule R-7, Jurisdiction, specifically and expressly provides that the arbitrator has the
11 power to rule on his or her jurisdiction, including the existence and validity of an arbitration
12 agreement or of the agreement of which an arbitration clause is a part, as follows:

13 (a) The arbitrator shall have the power to rule on his or her own
14 jurisdiction, *including any objections with respect to the existence,*
15 *scope, or validity of the arbitration agreement* or to the arbitrability
16 of any claim or counterclaim.

17 (b) The arbitrator shall have the power to determine *the*
18 *existence or validity of a contract of which an arbitration clause*
19 *forms a part. ...*

20 Request for Judicial Notice (“RJN”), Ex. 1, p. 13 (emphasis added).

21 As set forth below, the AAA’s decision was correct and there is no basis for NCW’s
22 instant application to delay the arbitration.

23 **B. When, as Here, an Arbitration Agreement Incorporates Rules that Provide for**
24 **the Arbitrator to Determine Arbitrability, Those Rules Apply**

25 “California has a strong public policy in favor of arbitration and any doubts regarding
26 arbitrability of a dispute are resolved in favor of arbitration.” *Coast Plaza Doctors Hospital vb.*
27 *Blue Cross of California* (2000) 83 Cal.App.4th 677, 686. Therefore, the party opposing
28 arbitration has the burden of showing that an arbitration agreement does not cover the dispute at
29 issue. *EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1321.

30 ///

1 Accordingly, many courts of held that when, as in the case at bar, an arbitration clause
2 incorporates AAA rules, the arbitrator has authority to and must determine jurisdiction and
3 arbitrability. The court in *Greenspan v. Ladit, LLC* (2010) 185 Cal.App.4th 1413, 1441-2, surveyed
4 some of the many cases that so hold, as follows:

5 In *Dream Theater, Inc. v. Dream Theater* (2004) 124 Cal.App.4th
6 547, the parties' contract stated arbitration would be conducted in
7 accordance with the commercial arbitration rules of the American
8 Arbitration Association (AAA). Those rules provided that the
9 arbitrator " 'shall have the power to rule on his or her own
10 jurisdiction, including any objections with respect to the existence,
11 scope or validity of the arbitration agreement.' " ... In discussing
12 the issue of arbitrability, the Court of Appeal explained: "It is
13 difficult to imagine how parties could state any more
14 comprehensively than they did in the Contract the intent to avoid
litigation at every step of the dispute resolution process. The
Contract provides that if a contested claim is not settled within the
contractual deadline, then it must be submitted to binding arbitration
in accordance with the AAA Commercial Arbitration Rules. These
rules specify that the arbitrator will decide disputes over the scope of
the arbitration agreement. We conclude that the parties' agreement
to arbitrate according to this rule is clear and unmistakable evidence
of the intent that the arbitrator will decide whether a Contested
Claim is arbitrable."

15 In *Rodriguez v. American Technologies, Inc.* (2006) 136
16 Cal.App.4th 1110, 1123, the Court of Appeal reached the same
17 conclusion: "Although the scope of an arbitration clause is generally
18 a question for judicial determination, the parties may, by clear and
19 unmistakable agreement, elect to have the arbitrator, rather than the
court, decide which grievances are arbitrable.... Here, the parties
clearly and unmistakably agreed to have the arbitrator determine the
scope of the arbitration clause. The contract mandates arbitration in
accordance with the [AAA's] Construction Industry Rules..."

20 In *Monex Deposit Co. v. Gilliam* (C.D.Cal.2009) 616 F.Supp.2d
21 1023, the plaintiffs moved to compel arbitration of the defendant's
22 counterclaims. The defendant argued that the arbitration clause was
unenforceable as to his statutory counterclaim because the arbitrator
could not award meaningful relief on that claim. The court granted
the motion in its entirety, noting: "The [parties'] agreement ...
23 incorporates JAMS Rules providing that the arbitrator decides scope
24 and validity disputes with respect to particular claims." (Id. at p.
1025, quoting JAMS Rule 11(a), (c).)

25 In *Sidell v. Structured Settlement Investments, LP* (D.Conn. Jan. 14,
26 2009) No. **491 3:08-CV-00710 (VLB), 2009 WL 103518, the
27 court granted a motion to compel arbitration and permitted the
arbitrator to determine the issues to be arbitrated. The court stated:
28 "In this case, there is both a broad arbitration clause and the
incorporation by reference of the JAMS Rules. The Rules provide
that arbitrators will determine their own authority. Either would

1 suffice as evidence of the parties' intent to arbitrate arbitrability."

2 Thus, "when ... parties explicitly incorporate rules that empower an
3 arbitrator to decide issues of arbitrability, the incorporation serves as
4 clear and unmistakable evidence of the parties' intent to delegate
such issues to an arbitrator." (*Contec Corp. v. Remote Solution, Co., Ltd.* (2d Cir.2005) 398 F.3d 205, 208 ...

5 In this case, the arbitration agreement states that the arbitration is to be "in accordance
6 with" AAA rules, and those rules state that the arbitrator shall decide arbitrability, including the
7 "the existence, scope, or validity" of the arbitration clause and of the agreement of which it is a
8 party. Accordingly, there is no basis for this Court to rule on those issues and no basis for this
9 Court to grant the extraordinary relief that NCW now seeks.

10 **C. NCW's Authorities Are Inapposite Because They Do Not Involve Arbitration**
11 **Agreements that Incorporated Rules Giving Arbitrators Authority to Decide**
the Issues that NCW Seeks to Raise

12 In his written argument to AAA objecting to proceeding with the Demand, NCW cited
13 several cases for the proposition that the court must decide whether an arbitration agreement was
14 fraudulently induced, including *Rice v. Dean Witter Reynolds, Inc.* (1991) 235 Cal.App.3d 1016,
15 1025, *Duick v. Toyota Motor Sales, U.S.A., Inc.* (2011) 198 Cal.App.4th 1316, 1321 and others.
16 (King Decl., Ex. 4.) However, none of those cases involved agreements that incorporated rules
17 that gave arbitrators authority to decide "the existence, scope, or validity" of the arbitration clauses
18 at issue. NCW acknowledged as much by offering AAA no authority to support his request that
19 AAA somehow distinguish this case from all other cases that put "the existence, scope, or
20 validity" of an arbitration clause at issue.

21 **D. There is No Basis for Expedited Discovery**

22 AAA Rules govern discovery and give the arbitrator authority to allow or disallow it.
23 RJN, Ex. 1, p. 19, R-22, Pre-Hearing Exchange and Production of Information. There is no reason
24 to deviate from that rule in this case.

25 ///
26 ///
27 ///
28 ///

1 **II. CONCLUSION**

2 For each of the foregoing reasons this Court should deny the instant application, in its
3 entirety.

4 DATED: July 27, 2017

KING, HOLMES, PATERNO & SORIANO, LLP

5
6 By: 

7 HOWARD E. KING

8 STEPHEN D. ROTHSCHILD

9 Attorneys for Defendant Impression Entertainment, Inc.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

MANAGEMENT AGREEMENT

AGREEMENT made this 25th day of August 2014, by and between Nikolaj Coster-Waldau ("Client") and Impression Entertainment, Inc. ("Manager").

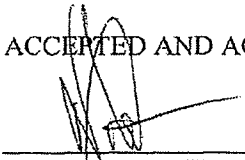
Whereas Client desires to obtain the advice, counsel and direction of Manager with respect to the development and enhancement of Client's artistic and professional career, and whereas Manager desires to render such services, it is hereby agreed as follows:

1. Client hereby engages Manager as Client's sole and exclusive manager. The term hereof shall be for an initial period of three (3) years and shall hereafter be renewed automatically for additional successive periods of one (1) year each all on the same terms and conditions, unless either party gives to the other written notice terminating such term effective as of the expiration of the then current year, which notice shall be given at least thirty (30) days. As and when requested by Client during and throughout the term hereof Manager agrees to perform services as follows: advise and counsel in the selection of theatrical, literary, artistic and musical material; advise and counsel with relation to adoption of proper format for presentation of Client's artistic talents and in determination of proper style, mood, setting, business and characterization in keeping with Client's talents; advise, counsel and direct in the selection of artistic talent to assist, accompany and embellish by artistic presentation; advise and counsel in any and all matters pertaining to publicity; public relations, compensation and privileges extended for similar artistic values; advise and counsel concerning the selection of talent agencies and persons, firms and corporations to counsel, advise, seek and procure employment and engagements for Client.
2. Manager's services hereunder are not exclusive, and Manager shall at all times be free to perform the same or similar services for others as well as engage in any and all other business activities.
3. In compensation for managing services, Client agrees to pay Manager, as and when received by Client (or by any entity rendering services on Client's behalf), a sum equal to ten percent (10%) of any and all gross monies or other considerations which Client or such entity may receive as a result of Client's activities in and throughout the entertainment industries, including any and all residuals or other sums resulting from the use of Client's artistic talents and the results and proceeds thereof and, without in any manner limiting the foregoing, the matters upon which Manager's compensation shall be computed shall include any and all of Client's activities in connection with motion pictures, television, theater, commercials, voiceovers, endorsements, hosting, radio, music, literary, talent engagements, personal appearances, public appearances in places of amusement and entertainment, records and recording, publications, and the use of Client's name, likeness and/or talents for purposes of advertising, trade and merchandising. Notwithstanding the foregoing, in the event that Client engages an agent in the United Kingdom, then the percentage in the foregoing sentence would be reduced to seven percent (7%) for projects based in the United Kingdom (provided that the United States agent and the United Kingdom agent each receive seven percent (7%)). Client agrees to pay Manager the above sum for the entire duration of any and all agreements commenced, entered into or substantially negotiated during the term or extension hereof, any extensions, resumptions or renewals thereof whether or not this agreement has expired or been terminated, provided that such gross monies shall not include increases in gross monies as a result of any such extension, renewal or renegotiation of any such agreements after the term hereof. Notwithstanding anything to the contrary herein, Client shall not pay Manager any commission for projects based in Denmark.

4. Notwithstanding the date of this agreement, it is acknowledged and agreed that Client has paid (starting with the pilot episode in 2009), and will continue to pay, commissions to Manager in accordance with Section 3 of this agreement in connection with Client's services on "Game of Thrones."

5. In the event of any dispute under or relating to the terms of this agreement or any extension or the breach thereof, it is agreed that the same shall be submitted to arbitration to the American Arbitration Association in California in accordance with the rules promulgated by said association before a single arbitrator with at least ten (10) years of experience in the entertainment industry, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This agreement shall be deemed to be executed in the State of California and shall be construed in accordance with the internal laws of said state.

ACCEPTED AND AGREED TO:



Nikola Coster-Waldau

IMPRESSION ENTERTAINMENT, INC.


By: _____
Authorized Representative

Signed this 25th day of August, 2014

EXHIBIT 2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-----Original Message-----

From: Nikolaj coster-Waldau [REDACTED]
Sent: Friday, September 18, 2015 1:55 AM
To: Jill Littman [REDACTED]
Subject: change

Dear Jill

Sitting here on the flight to munich-LA.

And I thought I need to put some words down in a email because suddenly the weekend is over and we don't have time to meet up. And this weekend is frantic to say the least.

This may come as a surprise or maybe not ?

I have been struggling with this for some time and have not been as communicative with you as before. I want to change some fundamental things in my whole professional setup.

My hope is over the next few years to be able to spend more time behind the camera as a director and

producer. It starts with [REDACTED] that we hopefully can get off the ground very soon. [REDACTED] and I will start our own company. [REDACTED] As you yourself did a few years ago which was very inspiring. You took a leap of faith and succeeded in a crazy competitive world. Along the way I was one of many who prospered from your hard work. I am nothing but grateful for our many years working together and the success we shared. And the reason I have decided to leave Impression is not to go somewhere else but to basically take control myself. Game of Thrones is coming to an end now. We have shared the financial rewards of the show and will till it ends after season 7.

It's a weird and sad decision. It has taken me a long time and a lot of thought to reach this conclusion but its done and I am 100% certain that it's the right thing for me at this point in my life to do. I need to force myself to risk and to take real charge .

So, it has everything to do with me and very little to do with your work which has been absolutely stellar. Looking at what we have achieved these past 10 years surpassed all my hopes.

I am going to be without a manager for the first time in a very long time.

Obviously I haven't told anyone in the team about this. I would let you decide how to inform them. And if you want me to tell them, then that's fine too.

Again Jill. It's obviously a weird feeling to send this news in an email but I wanted to be able to be clear and not silly and emotional because its a difficult decision. You are a friend.

I will call you when I get in this afternoon.

thank you

Nikolaj

Nikolaj coster-Waldau
[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, Twenty-Fifth Floor, Los Angeles, CA 90067-4506.

On July 28, 2017, I served true copies of the following document(s) described as **DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO EX PARTE APPLICATION FOR TRO AND OSC RE: ARBITRATION AND FOR EXPEDITED DISCOVERY** on the interested parties in this action as follows:

Michael J. Plonsker, Esq.
PLONSKER LAW LLP
100 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Tel.: (310) 861-2080
Fax: (310) 496-2577
Email: mplonsker@plonskerlaw.com

Attorneys for Plaintiff
Nikolaj Coster-Waldau

BY PERSONAL SERVICE: I personally delivered the document(s) directly to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 28, 2017, at Los Angeles, California.



Howard E. King